

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEAN STANDISH PERKINS, JR., et al.,

Plaintiffs,

v.

WESTPORT INSURANCE COMPANY, a
foreign corporation,

Defendant.

CASE NO. C07-1671RSM

ORDER ON MOTION FOR LEAVE TO
AMEND COUNTERCLAIMS

WESTPORT INSURANCE COMPANY, a
foreign corporation,

Counterclaimant,

v.

DEAN STANDISH PERKINS, JR., et al.,

Counterdefendants.

This matter is now before the Court for consideration of defendant's Rule 20 motion for leave to amend its counterclaims to join an additional party, Dkt. # 23. This case arises from a separate lawsuit prosecuted in state court, namely a malpractice claim against plaintiff Perkins by former clients Alice and Paul Padilla. That case has been settled, and the settlement has been approved by a Superior Court judge, although the case remains on the trial calendar. Plaintiffs in this matter seek a declaratory judgment finding that they are entitled to coverage for the malpractice suit under a policy issued by defendant Westport.

ORDER ON MOTION FOR LEAVE TO
AMEND COMPLAINT - 1

1 In this motion for leave to amend, defendant Westport seeks to join the Padillas as counterclaim
2 defendants. Plaintiffs have opposed the motion on several bases, including the fact that the proposed
3 amended counterclaims assert no claim for relief against the Padillas, and the contention that the issues in
4 this suit are purely matters of contract and insurance law revolving around defendant's duty to defend and
5 duty to indemnify. There are no questions of law or fact involving the Padillas, whose rights have been
6 fully adjudicated in the settled state court case. As the Padillas have no interest in this litigation, plaintiffs
7 argue, their joinder at this late date, when defendant has known of their existence since the filing of this
8 action, would unnecessarily delay this matter to plaintiffs' prejudice. Further, the Padillas will incur
9 needless expense in appearing and defending in this action, and may seek further recovery from plaintiffs,
10 again to plaintiffs' prejudice.

11 The Court finds, for the reasons asserted by plaintiffs, no basis under Rule 20 to allow joinder of
12 the Padillas as counterclaim defendants. There are no common questions of law or fact as between
13 plaintiffs and the Padillas that will arise in this action. F.R.Civ.Proc. 20((a)(2)(B). The motion for leave
14 to amend counterclaims is accordingly DENIED.

15 Plaintiffs have, by sur-reply, requested an award of attorneys' fees for their efforts in opposing a
16 motion they allege was brought in bad faith. Dkt. # 28. They have also made additional argument
17 against the merits of defendant's motion. This is an improper use of a sur-reply under the Local Rules of
18 this Court, and the Court has accordingly disregarded it. Local Rule CR 7(b); 7(g).

19 DATED this 17th day of April 2008.

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21 RICARDO S. MARTINEZ
22 UNITED STATES DISTRICT JUDGE
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